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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/590,612	06/08/2007	Frank Ewerhart	10191/4464	8962
26646	7590	03/01/2011	EXAMINER	
KENYON & KENYON LLP ONE BROADWAY NEW YORK, NY 10004				NGUYEN, CUONG H
ART UNIT		PAPER NUMBER		
3661				
MAIL DATE		DELIVERY MODE		
03/01/2011		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/590,612	EWERHART ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	CUONG H. NGUYEN	3661

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 8/24/2007 (a pre. amendment).
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 11-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 11-21 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |                                                                                        |                                                                   |
|----------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>8/24/06</u> .                                                 | 6) <input type="checkbox"/> Other: _____.                         |

1. This Office Action is an answer to pending claims received on 8/24/2007.
2. Claims 11-21 are pending in this application.

### **Claim Objections**

3. Dependent claims 14, and 19 are objected since their claimed language are unclear for:  
“...wherein in the event of danger corresponding to a high risk of collision, the evaluation unit at least one of parameterizes, prepares, and activates at least one of the steering system, the brake system, and a chassis of the motor vehicle so that the handling characteristics of the motor vehicle are optimized for a driving maneuver to be performed by the operator corresponding to one *of an avoidance maneuver and an emergency braking maneuver.*” (see pending claim 14 line 2, and claim 19 line 2), where in system claim 14 requires physical component/device, and method claim 19 requires steps to perform actions. The examiner is unclear about these claims’ limitations.

### **Claim Rejections - 35 USC §101**

35 U.S.C. §101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Method claims 15-20 are rejected under 35 U.S.C. 101. based on Supreme Court precedent and recent Federal Circuit decisions, the Office's guidance to an examiner is that a § 101 process must:
  - (1) be tied to a particular machine or apparatus or
  - (2) transform underlying subject matter (such as an article or materials) to a different state or thing. See Diamond v. Diehr, 450 U.S. 175, 184 (1981); Parker v. Flook, 437 U.S. 584,588 n.9

(1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780, 787-88 (1876).

- (a) To qualify as a § 101 statutory process, the claim should recite the particular machine or apparatus to which it is tied, for example by identifying the machine or apparatus that accomplishes the method steps, or positively reciting the subject matter that is being transformed, for example by identifying the material that is being changed to a different state.
- (b) There are two corollaries to the machine-or-transformation test. First, a mere field-of-use limitation is generally insufficient to render an otherwise ineligible method claim patent-eligible. This means the machine or transformation must impose meaningful limits on the method claim's scope to pass the test. Second, insignificant extra-solution activity will not transform an unpatentable principle into a patentable process. This means reciting a specific machine or a particular transformation of a specific article in an insignificant step, such as data gathering or outputting, is not sufficient to pass the test.
- (c) Here, applicant's method steps fail the first prong of the new test because there is no tie to a machine or apparatus.
- (d) Further, applicant's method steps fail the second prong of the test because the claimed steps do not result in an article being transformed from one state to another. There is no transformation occurring in the claims for a physical object or substance or data that represents physical objects or substances.

#### **Claim Rejections - 35 USC § 102**

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

35 U.S.C. § 102(e), as revised by the AIPA and H.R. 2215, applies to all qualifying references, except when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. For such patents, the prior art date is determined under 35 U.S.C. § 102(e) as it existed prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. § 102(e)).

5. Claims 11-21 are rejected under 35 U.S.C. § 102(e) as being anticipate by Hac et al., (US Pat. 7,016,783).

A. As to independent claims 11, and 15: Hac et al., teach about a system, and a method for a motor vehicle that includes at least one steering system and at least one brake system, comprising:

at least one detection unit for detecting internal and external conditions including vehicle parameters and a vehicle environment (see Hac et al., col. 1 lines 6-7, “which allow the monitoring of the conditions around moving vehicle and to detect presence of other vehicles and obstacles”, and col.1 lines 54-55 “a wheel speed sensor, and a sensor for detecting the application of braking by an operator”);

at least one evaluation unit (such as a determinator, or a processor), wherein:

the at least one evaluation unit compiles conditions detected by the at least one detection unit in

the form of data and information (see Hac et al., col. 2 lines 10-23), the at least one evaluation unit evaluates the detected conditions with respect to a hazard potential (such as detecting/considering an external potentially dangerous condition(s) , see Hac et al., col. 15 lines 8-10), the at least one evaluation unit determines from the data and information at least one driving variation corresponding to at least one of at least one avoidance trajectory and at least one automatic emergency braking action (see Hac et al., col. 2 lines 34-35), and when or after an operator of the motor vehicle initiates a driving maneuver corresponding to one of an avoidance maneuver and an emergency braking maneuver, the at least one evaluation unit specifies the driving maneuver in an optimized form (such as selecting a best available way to maneuver) corresponding to one of an optimal avoidance trajectory and the at least one automatic emergency braking action (see Hac et al., col. 4 lines 35-52) .

B. As to dependent claims 12, 16, and 18: Hac et al., also teach about the steering system informs the operator of the optimal avoidance trajectory as at least one of:

- one of an induced steering torque and an applied steering torque,
- at least one haptic signal corresponding to one of at least one oscillation and at least one vibration , and
- an induced additional steering angle implemented by superimposed steering (see Hac et al., col. 1lines 59-61) .

C. As to dependent claims 13, and 17: Hac et al., also teach that wherein in the event of danger corresponding to a high risk of collision, the evaluation unit at least one of:

- sends at least one of an acoustic warning, a haptic warning, and a visual warning (see Hac et al., col. 1 lines 18-20, “When the system determines that a collision

cannot be avoided by limited braking, a warning is sent to the driver to initiate harder manual braking or steer to a clear lane.”), and

- triggers the automatic emergency braking if no other driving variation corresponding to an avoidance trajectory is available (see Hac et al., col. 1 lines 30-32).

D. As to dependent claims 14, and 19: Hac et al., also teach that, wherein in the event of danger corresponding to a high risk of collision, the evaluation unit at least one of parameterizes, prepares, and activates at least one of the steering system, the brake system (see Hac et al., col. 1 lines 30-32)., and a chassis of the motor vehicle so that the handling characteristics of the motor vehicle are optimized for a driving maneuver to be performed by the operator corresponding to one of an avoidance maneuver and an emergency braking maneuver (see Hac et al., claims 31, 36, and 38).

E. As to dependent claims 20, and 21: Hac et al., also teach that, wherein the safety system is used in at least one driver assist system for increasing safety by avoiding accidents in traffic (such as standardized seat-belts, or airbags: these safety systems are inherently existed in Hac et al. vehicle).

### **Conclusion**

6. Pending claims are rejected.
7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to CUONG H. NGUYEN whose telephone number is 571-272-6759. The examiner can normally be reached on 9:30 am - 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, THOMAS G. BLACK can be reached on 571-272-6956. The Rightfax number for

the organization where this application is assigned is 571-273-6759.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Please provide support, with page and line numbers, for any amended or new claim in an effort to help advance prosecution; otherwise any new claim language that is introduced in an amended or new claim may be considered as new matter, especially if the Application is a Jumbo Application.

/CUONG H. NGUYEN/  
Primary Examiner  
Art Unit 3661